



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-40-10 et seq.
Regulation Title:	Regulations for Licensure of Respiratory Care Practitioners
Action Title:	Inactive licensure
Date:	1/5/00

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed amendments establish inactive licensure for respiratory care practitioners pursuant to the specific authority granted in the Code of Virginia by Chapter 469 of the 1998 Acts of the Assembly. The amended regulations set forth the conditions for inactive licensure and requirements for reactivation of an inactive license which include evidence of competency to return to active practice.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

18 VAC 85-40-10 et seq.: Regulations for Licensure of Respiratory Care Practitioners was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively administer the regulatory system.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*

7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

§ 54.1-2912.1 mandates the Board to prescribe continued competency requirements for practitioners it licenses.

§ 54.1-2912.1. Continued competency requirements.

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.

B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.

In addition to provisions in § 54.1-2400 which authorizes the Board to set qualifications and standards for renewal and to grant inactive licensure, the Code provides a mandate for licensure and involvement of the Advisory Board on Respiratory Care in:

§ 54.1-2954. Respiratory care practitioner; definition.

"Respiratory care practitioner" means a person who has passed the examination for the entry level practice of respiratory care administered by the National Board for Respiratory Care, Inc., or other examination approved by the Board, who has complied with the regulations pertaining to licensure prescribed by the Board, and who has been issued a license by the Board.

§ 54.1-2954.1. Powers of Board concerning respiratory care.

The Board shall take such actions as may be necessary to ensure the competence and integrity of any person who claims to be a respiratory care practitioner or who holds himself out to the public as a respiratory care practitioner or who engages in the practice of respiratory care and to that end the Board shall license persons as respiratory care practitioners. The provisions hereof shall not prevent or prohibit other persons licensed pursuant to this chapter from continuing to practice respiratory care when such practice is in accordance with regulations promulgated by the Board.

The Board shall establish requirements for the supervised, structured education of respiratory care practitioners, including preclinical, didactic and laboratory, and clinical activities, and an examination to evaluate competency. All such training programs shall be approved by the Board.

§ 54.1-2955. Restriction of titles.

It shall be unlawful for any person not holding a current and valid license from the State Board of Medicine to practice as a respiratory care practitioner or to assume the title, "Respiratory Care Practitioner" or to use, in conjunction with his name, the letters "RCP."

§ 54.1-2956. Advisory Board on Respiratory Care; appointment; terms; duties; etc.

A. The Advisory Board on Respiratory Care shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, and regulation of licensed respiratory care practitioners.

The Advisory Board shall consist of five members appointed by the Governor for four-year terms. Three members shall be at the time of appointment respiratory care practitioners who have practiced for not less than three years, one member shall be a physician licensed to practice medicine in the Commonwealth, and one member shall be appointed by the Governor from the Commonwealth at large. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two consecutive terms.

B. The Advisory Board shall, under the authority of the Board, recommend to the Board for its enactment into regulation the criteria for licensure as a respiratory care practitioner and the standards of professional conduct for holders of licenses.

The Advisory Board shall also assist in such other matters dealing with respiratory care as the Board may in its discretion direct.

§ 54.1-2956.01. Exceptions to respiratory care practitioner's licensure.

The licensure requirements for respiratory care practitioners provided herein shall not prohibit the practice of respiratory care as an integral part of a program of study by students enrolled in an accredited respiratory care education program approved by the Board. Any student enrolled in accredited respiratory care education programs shall be identified as "Student RCP" and shall only deliver respiratory care under the direct supervision of an appropriate clinical instructor recognized by the education program.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposed amendments is to establish inactive licensure for respiratory care practitioners pursuant to the specific authority granted in the Code of Virginia by Chapter 469 of the 1998 Acts of the Assembly. The amended regulations set forth the qualifications and requirements for reactivation of an inactive license which are consistent with protection of the public health and safety.

The Department of Health Professions sought legislation in the 1998 General Assembly to give authorization to all boards to issue an active license. Some boards within the Department already had such authority in the practice act for the particular professions regulated, but an amendment to § 54.1-2400 granted general authority to set out the qualifications, fees, and conditions for reactivation of inactive licensure.

While the requirements for biennial renewal of licensure as a respiratory care practitioner are minimal, the Board determined that all its licensees should have the option of requesting an inactive license if they are not currently practicing their profession.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Proposed amendments create an inactive license for who are not actively practicing in the Commonwealth and set the requirements for reactivation of licensure.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

ISSUE 1: Establishment of an inactive license.

The Department of Health Professions sought legislation in the 1998 General Assembly to give authorization to all boards to issue an active license. Some boards within the Department already had such authority in the practice act for the particular professions regulated, but an amendment to § 54.1-2400 granted general authority to set out the qualifications, fees, and conditions for reactivation of inactive licensure.

While the requirements for biennial renewal of licensure as a respiratory care practitioner are minimal, the Board determined that all its licensees should have the option of requesting an inactive license if they are not currently practicing their profession. The Board has also adopted a lesser fee for renewal of an inactive license.

Advantages and disadvantages

There are no disadvantages for the public which remains protected by requirements that assure that an active respiratory care practitioner is current in his skills and knowledge. By requiring an inactive licensee to provide some evidence of continued competency to practice, the Board has the opportunity to determine whether the practitioner has maintained active practice in another state, remained professionally current with continuing education or engaged in some other learning activities to update his knowledge and skills. For persons who do not want to actively practice for a period of time, these regulations will allow them to maintain an inactive license and eliminate the need to reapply for reinstatement of an expired license.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board of Medicine must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than \$1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Since these regulations are being amended simultaneously with other regulations of the Board, the costs of mailings, meetings and hearings will be shared by several professions. In addition, every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

The potential loss of income to the Board from persons who choose inactive licensure is minimal. It is estimated that only 20 or 30 licensees may become inactive; what is unknown is how many of those licensees might choose to allow their license to lapse if an inactive licensure status is not available. If the estimated 20 to 30 practitioners who are not practicing in the state let their license lapse, there could be a greater loss in revenue to the Board per biennium. Therefore, offering the option of inactive licensure could, in fact, result in a greater retention of revenue to the Board.

The Board will incur some costs for review of an application to reactivate an inactive license; it will be necessary to verify that competency requirements have been met and that an applicant who has been licensed in another jurisdiction has not had disciplinary action taken or pending. Since the number who will reactivate each year is expected to be small, that effort can be performed by the current staff and costs absorbed within the budget of the Board.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed respiratory care practitioners.

Estimate of number of entities to be affected:

There are 2,706 respiratory care practitioners licensed in Virginia; 373 of those list an out-of-state address. Some of those who live out-of-state may choose an inactive license if they are not actively practicing in Virginia. An estimate of the number who would request inactive licensure is 20 to 30 persons each biennium.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 85-40-61. Inactive license

The proposed new section would establish a category of inactive licensure and specify that such a license holder may renew by indicating his request for inactive licensure on a renewal form and payment of the required fee.

To reactivate an inactive license, a respiratory care practitioner is required to provide information on practice in another jurisdiction or some other evidence of continued competency to resume practice and to pay the difference between the current inactive and active renewal fee.

The Board reserves the right to deny a request for reactivation to any person determined to have committed a violation of these regulations or of § 54.1-2914 of the Code of Virginia.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Department originally submitted proposed regulations on inactive licensure for review by the Department of Planning and Budget on April 6, 1999. Subsequently, the Board determined that the fee structure for all applicants and licensees had to be revised, and this regulatory package was withdrawn pending approval of amended regulations for increased fees. The "Principles for Fee Development" adopted by the Department assumes that the biennial renewal fee for inactive licensure will be half that of active licensure. While the fees have not been amended in this proposal, the fee for inactive licensure will be incorporated into the proposal for amended fees during the final adoption of regulations.

By requiring an inactive licensee to provide some evidence of continued competency to resume practice, the Board has the opportunity to determine whether the practitioner has maintained active practice in another state, remained professionally current with continuing education or engaged in some other learning activities to update his knowledge and skills. For persons who do not want to actively practice for a period of time, these regulations will allow them to maintain an inactive license and eliminate the need to reapply for reinstatement of an expired license. Renewal of an inactive license will also be less expensive than renewal of an active license.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The Notice of Intended Regulatory Action was published on September 28, 1998 and subsequently sent to the Public Participation Guidelines Mailing List of the Board. The deadline for comment was October 28, 1998 and there was no comment received.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Prior to the adoption of proposed regulations by the Board, the Advisory Board on Respiratory Care and the Legislative Committee discussed the changes in open sessions. The clarity and reasonableness of the language which was adopted had the approval of the licensed acupuncturists, the Assistant Attorney General who worked with the Advisory Committee in drafting regulatory language, and members of the Board, including the citizen members.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board of Medicine (18 VAC 85-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Advisory Committee and the Legislative Committee of the Board will review this set of regulations in 2002 and will bring any recommended amended regulations to the full board for consideration.

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1)

strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The agency has reviewed the proposed regulation in relation to its impact on the institution of the family and family stability. There would be no effect of the proposal on the authority and rights of parents, economic self-sufficiency or the marital commitment. Since the proposed regulation will permit inactive licensure at one-half the renewal fee for those practitioners not practicing in Virginia, there could be a very minimal effect on disposable family income.